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10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA  
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13 MELVIN JONES, JR.,

14 Plaintiff,

15 v.

16 MICHAEL A. TOZZI et al.,

17 Defendants.  
18  
19

1:05-CV-0148 OWW DLB

MEMORANDUM DECISION AND ORDER  
RE DEFENDANT'S MOTION TO  
STRIKE (DOC. 223) AND  
PLAINTIFF'S REQUEST FOR A  
SCHEDULING CONFERENCE AND/OR  
TRIAL DATE (DOCS 222 & 226)

20 On May 1, 2006, the district court heard oral argument on a  
21 variety of pending motions in this case, including Defendants'  
22 motions to strike and to dismiss. The court indicated intent to  
23 grant Plaintiff leave to amend with respect to his allegations  
24 against Defendant Hollenback, but informed the parties that a  
25 written order would be forthcoming. Before the issuance of any  
26 written order, Plaintiff filed a fourth amended complaint. (Doc.  
27 221, filed May 4, 2006.) Defendant moved to strike the fourth  
28 amended complaint on the ground that leave to amend had not yet

1 been granted. (Doc. 223, filed May 12, 2006). Plaintiff opposes  
2 the motion to strike and has moved separately to set a scheduling  
3 conference regarding the claims against defendant Hollenback.  
4 (Docs. 222, 224, 225 & 226.) It is not necessary to hold oral  
5 argument on any of these motions.

6 Plaintiff has been previously warned that his practice of  
7 filing amended complaints without leave to amend unnecessarily  
8 confuses the docket and prevents the parties from receiving the  
9 court's analysis and decision on the pending motions addressing  
10 the operative complaint. Plaintiff must wait for a written  
11 decision and order on motions submitted for decision that  
12 actually grants him leave before filing any amended complaint.  
13 To protect the integrity of the judicial process, Plaintiff's  
14 unauthorized fourth amended complaint must be stricken.

15 The district court has expended considerable time and effort  
16 on a memorandum decision (filed concurrently with this order),  
17 which provides Plaintiff with a detailed explanation of  
18 deficiencies in his previous complaints. Plaintiff should take  
19 this reasoning into consideration when drafting his amended  
20 complaint. Plaintiff shall file his amended complaint within  
21 **twenty (20)** days following service of that memorandum decision.

22 To the extent that Plaintiff advances any issues for  
23 decision in his separate motion to set a scheduling conference  
24 (Doc. 222) and his "Statement regarding trial scheduling  
25 conference and []projection of trial date" (Doc. 226), those  
26 motions are **DENIED AS PREMATURE**. Plaintiff's fourth amended  
27 complaint has been stricken. Until Plaintiff properly files an  
28 amended pleading, there are no claims in this case to set for  
trial. The Federal Rules of Civil Procedure require that  
Defendant be given opportunity to challenge the amended pleading  
by way of any motion authorized by Rule 12. Any proposals for a

trial schedule will be considered in due course. Alternatively,  
if Defendant chooses not to challenge the amended pleading,  
Defendant shall inform the court so that a scheduling conference  
may be set.

**CONCLUSION**

For the reasons set forth above:

- (1) Defendant's motion to strike Plaintiff's unauthorized  
fourth amended complaint is **GRANTED**.
- (2) Plaintiff's motions regarding a scheduling conference  
and trial schedule are **DENIED AS PREMATURE**.
- (3) **The hearing currently set for June 12, 2006 is ordered  
off calendar.**

**SO ORDERED**

Dated: June 2, 2006

/s/ OLIVER W. WANGER

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**Oliver W. Wanger**  
**UNITED STATES DISTRICT JUDGE**